

MOTION BY SUPERVISOR DON KNABE

July 8, 2008

In 2003, Congress directed the Department of Health and Human Services (DHSS) to conduct a three-year demonstration project using Medicare Recovery Audit Contractors (RAC's) to identify and correct improper Medicare payments. RAC's are paid contingency fees, based on the percentage of the improper payments they find and collect. The RAC program first was implemented in California, Florida and New York, beginning in March 2005. Before this pilot project was evaluated, Congress enacted the Tax Relief and Health Care Act of 2006, which included language directing DHHS to make the RAC program permanent and nationwide by January 1, 2010.

The RAC pilot project, however, has proven to be extremely problematic. Contractors have a strong financial incentive to deny claims as they can keep contingency fees even if their denials are overturned on appeal. As a result, an inordinately high percentage of audited claims have been denied, especially claims from inpatient rehabilitation facilities (IRFs). According to the California Hospital Association, more than 90 percent of audited IRP claims in California have been denied, and, according to

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The American Hospital Association, as of July 2007, 63 percent of denied IRF claims that had completed the appeals process were overturned on appeal. Therefore, it is not surprising that Rancho Los Amigos National Rehabilitation Center had all nine of its audited IRF claims denied, and is appealing those denials.

Other problems with the RAC program have included: 1) RAC employees who audit claims lacked sufficient experience, training, and medical expertise to judge medical necessity; 2) Its lack of clear performance standards for contractors; and 3) Lack of adequate oversight of contractors. In response to such problems, Representative Caps (D-CA) introduced H.R. 4105, a bipartisan bill which would impose a one-year moratorium on the use of RACs and require the Centers for Medicare and Medicaid Services and U.S. General Accountability Office to evaluate the RAC program and report to Congress on its findings. Before the RAC program becomes permanent and is implemented nationwide, it should be thoroughly evaluated with its problems remedied.

**I, THEREFORE, MOVE** that the Board of Supervisors support H.R. 4105 or similar legislation, which would impose a one-year moratorium on the Medicare Recovery Audit Contractor Program, and support amendments which would establish clear performance standards for contractors, improve oversight of contractors, and require that judgments on medical necessity to be made by qualified medical professionals.

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